



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. Rogelio Pena
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2016-01857

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 595348 (COSA File No. W101172-102615).

The City of San Antonio (the "city") received a request for all contractual documents, staff reports, and fee schedules in regards to the city's right-of-way licenses for distributed antenna systems and small cells. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city has only submitted a portion of an agreement relating to small cell installation. You state the city does not have the information pertaining to right-of-way licenses for distributed antenna systems.¹ To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume the city has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information relates to the city’s traffic light pole infrastructure and fiber optic cable network. You assert, and we agree, the city’s traffic light pole infrastructure and fiber optic cable network are critical infrastructure. *See generally id.* § 421.001 (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). You explain the release of the submitted information could be useful to terrorists in gaining control of the city’s traffic light signals through the fiber optic network. Further, you state release of the submitted information could result in “serious security issues to databases and computers linked to the network” and would give “a road map to determine and plan an event for maximum disruption of traffic and resulting impact on emergency personnel.” Based on your representations and our review, we find the city has demonstrated the release of the submitted information would identify the technical details of particular vulnerabilities of the city’s traffic light pole infrastructure and fiber optic cable network to an act of terrorism. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.²

²As our ruling is dispositive, we need not address your remaining arguments under section 552.101 of the Government Code in conjunction with common-law privacy and section 418.182 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, flowing style.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 595348

Enc. Submitted documents

c: Requestor
(w/o enclosures)